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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

PAUL MAU TRUONG LAW et al.,

Plaintiffs and Appellants,

v.

CHIEN KUO HSIEH et al.,

Defendants and Respondents.

B215171

(Los Angeles County  
Super. Ct. No. GC040213)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
C. Edward Simpson, Judge. Affirmed.

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David C. Buxbaum for Plaintiffs and Appellants.

Wong & Mak and Steven W. Hashimoto for Defendants and Respondents.  
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A seller and manufacturer of women's handbags sued a buyer in the United States for breach of contract after the buyer stopped placing orders. The trial court found that the buyer's performance was excused because the seller had unilaterally altered a material term of the parties' agreement and because an unreasonable amount of the seller's product was defective or nonconforming. We affirm.

### **BACKGROUND**

This appeal challenges the sufficiency of the evidence to support the court's findings and judgment. As we must, we recount the evidence in the light most favorable to the prevailing party. (*ASP Properties Group v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1266.)

Paul Mau Truong Law and his wife Mei Yuk Yu (Law) own a business called Chateau Anne Group Limited in Hong Kong which designs and manufactures leather goods, primarily women's handbags. Mr. Law is in charge of sales and design of the leather goods. Mrs. Law is the company's accountant. Law's leather goods are produced in factories located in mainland China.

In 1990, Chien Kuo Hsieh and his wife Susan Hsieh (Hsieh) worked as real estate agents and brokers in California and, in this capacity, assisted Law in Law's purchase of a commercial property in Alhambra for the purpose of expanding Law's leather goods business to the United States. In 1991 Law hired Susan Hsieh to manage their American subsidiary which they called Chateau Anne USA, Inc.

In 2002, Hsieh agreed to buy Chateau Anne USA, Inc. from Law for \$1.8 million. On December 10, 2002, Hsieh visited Law's offices in Hong Kong for the purpose of consummating the sale. Law presented Hsieh with a written agreement Law had already prepared for the sale of the shares of Chateau Anne USA, Inc. and the Alhambra real estate. The agreement apparently provided for an exclusive sales

arrangement between the Hong Kong and American companies and provisions dealing with increased expectation of orders from Hsieh.<sup>1</sup>

Law testified that in 2003 Hsieh purchased goods for \$1.5 million and purchased increased amounts in the years 2004 and 2005. Hsieh, however, did not pay for handbags Law delivered in April through August 2005, and by August 2005 Hsieh owed Law over \$1.3 million.

Susan Hsieh testified that during this period of April to August 2005 Law delivered ever-increasing amounts of defective merchandise. She testified that at the beginning of their business relationship, she personally returned defective handbags to Law's factory in China but when the amount of defective bags increased this approach was no longer feasible. Instead, Law and Hsieh solved the problem of defective goods by Law discounting amounts Hsieh owed. Beginning in 2005, however, as much as 20 percent of each shipment of handbags was defective. Ten percent of this merchandise was unsalable and was thrown away. As much as 10 percent of the defective product could only be sold at steep discounts. Hsieh also experienced customer relation problems and incurred additional costs when retailers returned merchandise and requested refunds. The handbags sold for between \$150 and \$250. Customers refused to accept the flawed merchandise.<sup>2</sup>

Sometime in August 2005 Hsieh discussed the defect problems with Law's factory manager in China and requested a discount. Hsieh also spoke to Mr. Law and requested a 50 percent discount of the billed amount. Law countered with an offer of a 20 percent discount. On September 6, 2005, Hsieh wrote to Mrs. Law and offered to pay 60 percent of the outstanding balance. Mrs. Law sent a fax to Hsieh agreeing to the

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<sup>1</sup> Neither party has provided us with a copy of the agreement, but the transcript of the trial suggests that each party agreed to deal exclusively with the other in the handbag business and various provisions of the agreement discussed expected increased sales.

<sup>2</sup> Typical defects included different hues of the same leather on a single handbag; varying colors in a batch of what was supposed to be identical handbags, broken metal closures; broken straps; thin handbag linings that tore easily; peeling leather; and blemishes or smudges in the leather.

40 percent discount, on condition that Hsieh pay the remaining amount that very day. On September 7, 2005, Law received Hsieh's payment of \$819,920, 60 percent of the amount owed.

A week later Law's factory manager contacted Hsieh and tried to renegotiate for a 35 percent discount instead. Thereafter, Law informed Hsieh that Law expected Hsieh to pay the remaining 40 percent. Hsieh promptly informed Law, by letter and telephone calls, that Chateau Anne USA, Inc. owed nothing beyond the 60 percent that Hsieh agreed to and already paid.

Apparently, in September and October 2005, Hsieh had an outstanding order with Law when Law informed her that he was changing the payment terms from payment 60 days after receipt to prepayment by cash or letter of credit. At trial, Mr. Law justified the change on the grounds that because Hsieh had unreasonably delayed payment before even demanding a discount and still owed the full amount, Hsieh was no longer creditworthy. Susan Hsieh testified that she had rejected the new terms as unreasonable.

The parties all agreed that the written agreement was silent as to payment terms. The parties also agreed that from 1993 until 2005, when Law made the demand for prepayment or a letter of credit, Chateau Anne USA, Inc. had paid 60 days after receipt of product. Susan Hsieh testified that she refused to agree to the new payment terms because Chateau Anne USA, Inc. did not have the financial ability to meet the new payment terms.

In late 2005, Hsieh visited Law's factory in China and inspected her order. Hsieh inspected each bag one by one, determined that they were all defective, and refused to take delivery. Hsieh placed no further orders with Law.

On January 17, 2008, Law sued Hsieh for breach of contract, apparently claiming \$2.3 million as damages. After a court trial, the judge found for Hsieh, explained its reasons on the record, and thereafter entered judgment. As pertinent here, the court found "there is a significant enough ambiguity in the agreement concerning the 15

percent annual increases [of sales], and I interpret those paragraphs beginning with paragraph 'E,' 'F,' 'G,' 'H,' and 'I' to reflect the parties' target sales to reflect the parties' anticipated future growth of [Hsieh's] business as distinguished from a promise on the part of the buyers to increase their handbag orders by the percentage set forth in paragraph 'H.' [¶] And I arrive at that interpretation by the language in paragraph 'E' that talks about sales target. It says, 'if the sales target is reached by the buyers.' Paragraph 'G' says, 'the buyers would purchase \$1.5 million in handbags for' – 'from the sellers in the year 2003.'

The court added that even if the \$1.5 million mentioned in paragraph "G" was a commitment rather than a target, Hsieh was nevertheless entitled to judgment because "the buyers are excused from performance for the two reasons that they've indicated." The court explained: "One, the significant change in the terms; namely from a 60-day payment period to either cash or a line of credit. There is some communication from Chateau Anne Group Limited that they were also seeking a 50 percent deposit for each order. [¶] Those were significant changes. It's obvious to the court that the [effect] of those changes on the cash flow of Chateau Anne U.S.A. is obvious. They would have to have significantly more capital in order to finance their purchases on a cash basis than they would on a 60-day credit basis. A 60-day credit basis would enable them to sell and hopefully be paid for some of the product before payment was due in Hong Kong. [¶] And secondly, I think that the buyers are excused from performance under the contract as a result of the somewhat increasing and more significant defects in the products. I accept Mrs. Hsieh's testimony that she personally went to Hong Kong, inspected the shipment that had not yet been made, that was still in the warehouse, and found it to be entirely unacceptable in quality. [¶] As far as the plaintiffs' claim for the unpaid purchase items, if the pleadings were interpreted broadly to place those items in issue, I find that the parties agreed to a 60 percent payment. [¶] Exhibit 13-5 was signed by Mrs. Law. According to her testimony, it was forwarded to the office in Hong Kong. The office in Hong Kong added information to that document at the bottom which

confirmed the discount and set a payment date that was met. [¶] That notation at the bottom combined with Ms. Law's ostensible agency relationship to Chateau [Anne] Group Limited I believe gives rise to a binding obligation on its part to accept the 60 percent that was paid."

This appeal followed.

## DISCUSSION

### Contract Terms

Law contends that the evidence required the court to find that Hsieh breached the agreement by (1) not meeting the agreed upon guaranteed monthly minimums and annual increases, (2) failing to submit marketing plans, and (3) not buying exclusively from Law. As best we can understand, Law also contends that Hsieh unjustifiably failed to pay for a fulfilled order that was ready to ship.

The record is inadequate to evaluate Law's claims (1), (2) and (3) because Law did not designate for inclusion in the clerk's transcript a copy of the written agreement, or, for that matter, any documents for inclusion in the clerk's transcript.<sup>3</sup> As the appellants, it was Law's burden to provide this court with an adequate record demonstrating error. (*State Farm Fire & Cas. Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610 ["The burden of affirmatively demonstrating error is on the appellant. This is a general principle of appellate practice as well as an ingredient of the constitutional doctrine of reversible error.' . . ."].) For example, Law claims that contrary to the court's finding, the agreement as to the monthly minimums and annual increases was not ambiguous but obliged the buyer to meet certain sales amounts. We cannot, however, evaluate that claim without a copy of the agreement. Likewise, as to claims (2) and (3), without the agreement we cannot determine the buyer's duties under the

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<sup>3</sup> Because Law did not designate any specific documents or exhibits, the clerk's transcript contains only the mandatory minimum: the notice of appeal; the judgment appealed; the notices to prepare the clerk and reporter's transcripts; and a register of actions. (See Cal. Rules of Court, rule 8.122(b)(1).)

agreement. We accordingly have no basis to disturb the court's conclusions with respect to the proper interpretation of the contract terms and its findings of no breach.<sup>4</sup> (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132.)

With regard to Law's claim that Hsieh was required to accept and pay for the last order placed, the reporter's transcript, which Law did provide, is sufficient to review this claim.

### **Standard of Review**

The trial court's judgment and statement of decision contain both findings of fact and conclusions of law. "We review the trial court's findings of fact to determine whether they are supported by substantial evidence. [Citation.] To the extent the trial court drew conclusions of law based upon its findings of fact, we review those conclusions of law de novo. [Citation.]' [Citation.]" (*ASP Properties Group v. Fard, Inc.*, *supra*, 133 Cal.App.4th at p. 1266.)

### **Change of Payment Terms**

Law contends the trial court erred in finding that Hsieh was excused from performance because Law unilaterally changed payment terms from 60 days' credit to prepayment or payment by letter of credit. Law argues that it was reasonable to demand immediate payment, instead of continuing to finance a 60-day credit period for Hsieh because Hsieh altered the 60-day payment term by delaying payment and then

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<sup>4</sup> In their reply brief Law points out that the trial court admitted all proffered exhibits and thus all documents, including the written agreement attached to their complaint, were before the trial court and may be properly considered by this court. Although the court admitted and considered all exhibits, it returned them to the parties and it was Law's responsibility to designate for inclusion in the clerk's transcript all documents, including exhibits, Law wished the appellate court to consider. (See Cal. Rules of Court, rule 8.122(a)(3) ["all exhibits admitted in evidence, refused, or lodged are deemed part of the record, but a party wanting a copy of an exhibit included in the transcript must specify that exhibit by number or letter in its notice of designation. If the superior court has returned a designated exhibit to a party, the party in possession of the exhibit must promptly deliver it to the superior court clerk on receipt of the designation"].)

demanding a discount before paying.<sup>5</sup> Accordingly, Law contends that the trial court erred in concluding that the change in payment terms excused Hsieh's performance. We disagree.

Although the written agreement was silent regarding payment terms, Law does not dispute that since 1993 the parties' normal course of business was for Law to extend 60 days' credit to Chateau Anne USA, Inc. (*Crawford v. Continental Cas. Co.* (1968) 261 Cal.App.2d 98, 102 [parties' course of conduct can define absent or ambiguous terms in an agreement].) Law also acknowledged that Hsieh stopped ordering product because Law refused to continue the parties' historical 60-day payment term. Rather, Law contends that the court erred when it concluded that the change excused Hsieh's performance. We disagree.

Substantial evidence supports the trial court's implied finding that Law's unilateral change of the parties' customary payment terms was a material breach of the agreement and excused Hsieh's performance. (*B.L. Metcalf General Contractor, Inc. v. Earl Erne, Inc.* (1963) 212 Cal.App.2d 689, 693 [a material breach gives the nonbreaching party the right to terminate the contract].) Law challenges this implied finding by arguing that the change was not material. The court, however, as the trier of fact, was justified in crediting Susan Hsieh's testimony that she could not accept Law's proposed new payment terms because the new arrangement would cause Chateau Anne USA, Inc. severe cash flow problems. At trial, Law acknowledged that Hsieh stopped ordering product because Law refused to continue the parties' historical 60-day payment term.

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<sup>5</sup> Law does not directly challenge the court's finding that the disputed amount Hsieh owed Law in August 2005 was resolved through negotiation and compromise whereby Law agreed to a 40 percent discount in exchange for immediate payment of the balance due. Law instead raises this factual issue of the disputed amounts owed and Hsieh's delayed payment as justification for Law's change in payment terms.



## Defective or Nonconforming Goods

Law also challenges the court's alternate ground excusing Hsieh's performance—Law's failure to perform by offering "an unacceptable" amount of defective or nonconforming goods. Law contends the defects were rare and Hsieh "exaggerated the problem of defective goods as a post hoc method of excusing themselves from an [a]greement they were already breaching." We disagree.

Substantial evidence supports the trial court's implied finding that Law breached the contract by supplying an unacceptable amount of defective goods, which breach excused Hsieh's performance. Hsieh testified that initially there were few defective handbags and she personally returned them to the factory in China. Later, the amount of defective product increased up to 20 percent and the last order, which she personally examined in China, was 100 percent defective. The trial court found her testimony credible and we are bound by that determination. (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968 [the appellate court does not evaluate the credibility of the witnesses but defers to the trier of fact].)

Assuming the parties' agreement contained these terms and that these terms imposed duties on the buyer, Hsieh was nevertheless excused from performance of the agreement's obligations for the same reasons we have already discussed—Law's unilateral change of payment terms and Law offering unreasonable amounts of defective or nonconforming goods.<sup>6</sup> (*B.L. Metcalf General Contractor, Inc. v. Earl Erne, Inc.*, *supra*, 212 Cal.App.2d at p. 693.)

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<sup>6</sup> In light of our conclusion that the trial court correctly entered judgment in Hsieh's favor, we need not address Law's argument that the trial court erred in finding that the evidence of Law's damages was uncertain. (Civ. Code, § 3301.)

**DISPOSITION**

The judgment is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.